

**OPEN RECORDS AND MEETINGS OPINION  
2010-O-03**

DATE ISSUED: April 14, 2010

ISSUED TO: Barnes County Commission

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Lloyd A. Nelson asking whether the Barnes County Commission violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding meetings not preceded by proper notice.

**FACTS PRESENTED**

At the January 5, 2010, meeting of the Barnes County Commission, the county tax director proposed that the county change software systems for land appraisals. The Commission asked the tax director to provide more information on the proposed software purchase at the January 19 meeting.

After the January 5, 2010, meeting, Mr. Nelson called several Barnes County Commissioners to express his opinion about the company the Commission was considering for the software conversion. His calls were returned while he was not at home so two commissioners left messages on his answering machine. The two commissioners who left messages used the past tense when discussing the company, leading Mr. Nelson to suspect that the Commission had already decided to hire the company during a meeting that was not noticed to the public.

**ISSUE**

Whether the Barnes County Commission held a meeting that was not publicly noticed.

**ANALYSIS**

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public.<sup>1</sup> A "meeting" means a formal or informal gathering of a quorum of the member of the governing body of a public entity regarding public business.<sup>2</sup> A "quorum" means one-half or more of the members of the governing body, or any smaller

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<sup>1</sup> N.D.C.C. § 44-04-19.

<sup>2</sup> N.D.C.C. § 44-04-17.1(8)(a)(1).

number if sufficient for a governing body to transact business on behalf of the public entity.<sup>3</sup>

Here, the requester alleges that voicemail messages received from two county commissioners prior to the Commission's January 19, 2010, meeting referred to the purchase of Vanguard Appraisal's CAMA vision software in the past tense thereby suggesting the decision to purchase the software had taken place at a prior unnoticed meeting of the Commission. Although the tax director "presented a proposal for conversion of the Computer Professionals Unlimited (CPU) CAMA system to the Vanguard CAMA system,"<sup>4</sup> at the January 5, 2010, meeting, no decision to purchase the Vanguard CAMA software was made by the Commission until the January 19, 2010, meeting.<sup>5</sup> Additionally, the Commissioners deny that a quorum of the Commission met between January 5 and January 19, 2010, to discuss the purchase of software.<sup>6</sup> In any opinion issued under the Open Meetings Law, the Attorney General must base the opinion on the facts given by the public entity.<sup>7</sup> Consequently, it is my opinion that a quorum of the Commission did not discuss the software purchase at an unnoticed meeting.

Wayne Stenehjem  
Attorney General

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<sup>3</sup> N.D.C.C. § 44-04-17.1(14).

<sup>4</sup> Minutes, Barnes County Comm'n, Jan. 5, 2010 (emphasis added).

<sup>5</sup> Minutes, Barnes County Comm'n, Jan. 19, 2010; see also Letter from Bradley A. Cruff, Barnes County State's Attorney, to Mary Kae Kelsch, Assistant Attorney General (March 2, 2010) (stating "[t]he decision to purchase software from Vanguard was made at the January 19, 2010 [county commissioners] meeting").

<sup>6</sup> Letter from Bradley A. Cruff to Mary Kae Kelsch (March 2, 2010).

<sup>7</sup> N.D.C.C. § 44-04-21.1(1).